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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	**CC Docket No. 98-121**
BellSouth Long Distance, Inc. for	)	
Provision of In-Region, InterLATA	)	
Services in Louisiana	)	

COMMENTS OF INTERMEDIA COMMUNICATIONS INC. IN OPPOSITION TO BELLSOUTH'S APPLICATION FOR IN-REGION, INTERLATA AUTHORITY IN LOUISIANA

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SUMMARY

For the second time in less than one year, BellSouth is seeking this Commission's grant of in-region, interLATA authority in Louisiana. Once again, this Commission must decline BellSouth's invitation.

Nothing much has changed since the Commission first rejected BellSouth's application for in-region, interLATA authority in Louisiana six months ago. BellSouth's OSS continues to be deficient, and CLECs continue to experience the same problems that existed before. Similarly, BellSouth's compliance with the Competitive Checklist remains half-baked.

Recent developments also cast serious doubts on BellSouth's ability to comply with its statutory obligations. BellSouth now insists that CLECs must collocate in order to combine UNEs. Similarly, BellSouth continues to resist its reciprocal compensation obligations. In addition, BellSouth has begun to erect roadblocks to unbundled access to its broadband services and facilities.

The evidence presented by BellSouth in this proceeding clearly demonstrates that BellSouth has not satisfied the Competitive Checklist. Similarly, the lack of facilities-based competition in Louisiana can only mean that BellSouth has not satisfied the threshold requirements of Track A. Because the local exchange market in Louisiana is not yet irreversibly open to competition, and because BellSouth fails to meet its statutorily imposed market-opening obligations at this time, the Commission must once again reject BellSouth's application.

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INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), through its undersigned counsel and pursuant to the Commission's Public Notices,[1] hereby respectfully submits its comments in this proceeding. As more fully discussed below, Intermedia strongly opposes BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.'s (collectively, "BellSouth") application for in-region, interLATA authority in Louisiana on the grounds that BellSouth fundamentally fails to satisfy the requirements of the federal Telecommunications Act of 1996 (the "1996 Act") for in-region, interLATA entry.

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[1] *See* Public Notice, DA 98-1364 (July 9, 1998); Public Notice, DA 98-1480 (July 23, 1998).

I. BACKGROUND AND INTRODUCTION

Intermedia is the nation's largest independent competitive local exchange carrier ("CLEC"), providing integrated telecommunications solutions to business and government customers. These solutions include voice and data, local and long distance, and advanced broadband services provided throughout the United States.

Intermedia is a certificated competitive local exchange carrier in Louisiana. It currently provides telecommunications services, including competitive local exchange service—in each state in which BellSouth is the dominant incumbent local exchange carrier ("ILEC"). Intermedia has a negotiated, State commission-approved interconnection agreement with BellSouth encompassing BellSouth's nine-state service territory. As both a competitor and a customer of BellSouth, Intermedia is critically interested in the outcome of this proceeding.

In this proceeding, BellSouth seeks Commission authorization to provide interLATA services originating in the State of Louisiana.[2] BellSouth attempts to demonstrate compliance with the Competitive Checklist through a combination of State commission-approved interconnection agreements and a Statement of Generally Available Terms and Conditions (more commonly referred to as "SGAT").[3] Intermedia's "real-world" experience with BellSouth, however, directly disproves BellSouth's claims that it has met the fundamental requirements of the 1996 Act. In particular, and as set forth at length below, BellSouth does not, at this time, meet the threshold requirements of Section 271(c)(1)(A) (more commonly referred to as "Track

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2 *See* Brief in Support of Second Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana, at 1 (filed July 9, 1998) (*Brief*).

3 *See Brief*, at 15.

A")—the provision upon which BellSouth is relying to obtain in-region, interLATA relief.[4] Similarly, BellSouth does not, at this time, fully satisfy each and every requirement of Section 271(c)(2)(B) (more commonly referred to as the "Competitive Checklist"). Finally, BellSouth fails to demonstrate that its entry into the in-region, interLATA market in Louisiana is in the public interest at this point.

The burden of proof in this proceeding is, of course, appropriately on BellSouth. As the Commission previously has found:

> Section 271 places on the applicant the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied. Section 271(d)(3) provides that "t]he Commission shall not approve the authorization requested in an application . . . *unless* it finds that [the petitioning BOC has satisfied all of the requirements of Section 271]" Because Congress required the Commission affirmatively to find that a BOC application has satisfied the statutory criteria, the ultimate burden of proof with respect to factual issues remain at all times with the BOC, even if no party opposes the BOC's application.[5]

Thus, BellSouth must prove, by preponderance of the evidence, that it has satisfied its statutory obligations for in-region, interLATA entry. The evidence introduced by BellSouth thus far fails to demonstrate BellSouth's compliance with the requirements of the 1996 Act.

II. AS A THRESHOLD MATTER, BELLSOUTH HAS NOT SATISFIED THE REQUIREMENTS OF SECTION 271(c)(1)(A).

The 1996 Act provides two ways for Bell Operating Company ("BOC") entry into the in-region, interLATA market: entry through Section 271(c)(1)(A) (also more commonly referred to

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4 *See Brief*, at 3 (filed July 9, 1998).

5 *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, at ¶ 43 (rel. Aug. 19, 1997) (*Ameritech-Michigan Order*) (emphasis in original).

as "Track A"), and entry through Section 271(c)(1)(B) (also more commonly referred to as "Track B"). Track A, which is the track BellSouth has elected to pursue (and the only track which is potentially open to BellSouth at this time), requires the BOC to demonstrate that it "is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers," and the telephone exchange service is being offered by the competing providers "either exclusively over their own . . . facilities or predominantly over their own . . . facilities in combination with resale" of another carrier's telecommunications services.[6] In order for BellSouth to satisfy the Track A criteria, the facilities-based competitive provider(s) must be operational and offering a competitive service to residential and business subscribers.

BellSouth does not meet the requirements of Track A at this time. It is true, as BellSouth acknowledges, that BellSouth has entered into several interconnection agreements approved by the Louisiana Public Service Commission ("LA PSC"), including Intermedia's.[7] The 1996 Act, however, requires more than a showing that BellSouth has entered into interconnection agreements. Rather, the 1996 Act requires that BellSouth must have implemented the provisions of the interconnection agreements. Equally important, the 1996 Act requires *meaningful* facilities-based competition for business *and* residential customers—whether provided by a single competitive provider or a combination of providers—as a condition-precedent to a BOC entry into the in-region, interLATA market. Thus, contrary to BellSouth's assertion,[8] BellSouth cannot meet the requirements of Track A if its competitors are only providing facilities-based

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6 47 U.S.C. § 271(c)(1)(A).

7 Affidavit of Gary M. Wright, at 7.

8 *See Brief*, at 7.

business services; rather, they must also be providing facilities-based residential service. BellSouth is relying upon six wireline CLECs, namely e.spire, American MetroComm, Entergy Hyperion Telecommunications, KMC Telecom, Inc., Shell Offshore Services Company, and AT&T, to demonstrate compliance with Track A.[9] BellSouth, however, has not demonstrated that these wireline carriers, individually or collectively, are providing facilities-based or predominantly facilities-based business and residential services in Louisiana. In fact, BellSouth readily admits that it "does not possess sufficient information to determine the exact number and class of service of all facilities-based local exchange service lines provided by CLECs in Louisiana.[10] Indeed, it is Intermedia's understanding that KMC Telecom, Inc., which BellSouth claims is currently providing facilities-based telephone exchange service to residential and business customers,[11] does not in fact provide facilities-based residential service.

BellSouth further asserts that in addition to satisfying Track A through the activities of wireline carriers mentioned above, BellSouth also is eligible for Track A based on the existence of Personal Communications Services ("PCS") providers in Louisiana.[12] BellSouth is clearly mistaken. BellSouth cannot rely upon PCS providers to demonstrate compliance with Track A for the simple reason that PCS providers are not "competing providers" under Section 271(c)(1)(A). PCS cannot be considered "actual commercial alternatives to the BOC."[13] As the

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9 *See Brief*, at 4-6.

10 Affidavit of Gary M. Wright, at 22.

11 Affidavit of Gary M. Wright, at 22.

Commission and the Department of Justice ("DOJ") previously have concluded, PCS is still in the process of transitioning from a complementary telecommunications service to a competitive equivalent to wireline services.[14] BellSouth has not demonstrated that PCS has made the competitive transition referred to by the Commission and the DOJ. Thus, BellSouth cannot rely upon PCS providers to satisfy the requirements of Track A at this time. BellSouth's reliance on PCS advertisements of competing carriers to demonstrate that the 'transition from wireline to wireless has already occurred"[15] is tenuous. These sales and marketing materials do not prove anything—they simply demonstrate that PCS is commercially available.

In view of the fact that none of the wireline CLECs operating in Louisiana is providing facilities-based or predominantly facilities-based telephone exchange service, individually or collectively, to residential and business subscribers in Louisiana, BellSouth has not satisfied the threshold requirements of Track A. Similarly, because PCS service cannot be considered a competitive alternative to wireline service in Louisiana at this point, BellSouth's reliance on PCS providers to qualify under Track A is misplaced.[16]

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14 *See BellSouth-Louisiana Order*, at ¶ 73 (citing *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 97-75, Second Report, WT 97-14 at 55-56 (rel. Mar. 25, 197)).

15 *Brief*, at 12.

16 Intermedia does not discuss BellSouth's ineligibility for Track B in this comments because BellSouth has already confirmed in its application that it is pursuing in-region, interLATA entry via Track A. Even if it were not the case, BellSouth would not qualify under Track B because BellSouth has received "qualifying requests" for access and interconnection. *See Application of SBC Communications, Inc. Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order (rel. Aug. 26, 1997) (*SBC Oklahoma Order*)

III. BELLSOUTH FAILS TO DEMONSTRATE THAT IT MEETS THE COMPETITIVE CHECKLIST.

A. BELLSOUTH MUST SATISFY EACH AND EVERY ITEM ON THE COMPETITIVE CHECKLIST.

As a preliminary matter, Intermedia disagrees with BellSouth that it can rely upon its SGAT, in combination with its interconnection agreements, to satisfy the requirements of Track A. Nothing in the 1996 Act or this Commission's previous decisions suggests that the petitioning BOC can introduce its SGAT as proof that it is meeting its obligations under Track A. If that were the case, BellSouth would have no incentive to implement its interconnection agreements because BellSouth could simply assert that it is generally offering access and interconnection—as supposed to actually providing access and interconnection—in order to obtain in-region, interLATA relief. Intermedia does not believe that the requirements of the 1996 Act could be so easily circumvented. Even assuming, *arguendo*, that BellSouth may rely upon its SGAT in combination with its interconnection agreements with CLECs , BellSouth nonetheless fails to demonstrate that it satisfies the requirements of the Competitive Checklist.

Section 271 of the 1996 Act requires that, as a precondition to a grant of in-region, interLATA authority, the petitioning BOC must, among other things, comply with *every* requirement of Section 271(c)(2)(B), including: (1) interconnection; (2) nondiscriminatory unbundled access to network elements; (3) nondiscriminatory access to poles, ducts, conduits, rights of way, etc.; (4) unbundled local loop transmission; (5) unbundled local transport; (6) unbundled local switching; (7) nondiscriminatory access to 911/E911, directory assistance, and operator services; (8) white pages directory listings; (9) nondiscriminatory access to telephone numbers; (10) nondiscriminatory access to databases and signaling; (11) number portability; (12) local dialing parity; (13) reciprocal compensation; and (14) telecommunications service resale.

Similarly, Section 271 encompasses the requirements of Sections 224, 251(b)(3), 251(c)(2), 251(c)(3), 251(c)(4), 252(d)(1), and 252(d)(3).

In addition, an evaluation of BellSouth's compliance with the Competitive Checklist necessarily involves an analysis of nondiscriminatory access to BellSouth's operations support systems ("OSS"). Similarly, because proof of nondiscriminatory access to BellSouth's OSS can only come from ascertainable performance data, a determination of BellSouth's compliance with its OSS, interconnection, unbundling, resale, and other obligations necessarily involves an evaluation of BellSouth's performance measures.

It is thus beyond dispute that the burden on the BOC applying for in-region, interLATA authority is steep—one which involves a demonstration of full compliance with discrete interconnection, collocation, unbundling, resale, OSS, and other critical market-opening obligations. As discussed below, BellSouth has failed to meet its burden.

B. BELLSOUTH'S DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OSS.

The term "operations support systems" refers to computer systems, databases, and personnel that ILECs rely upon to accomplish many internal functions necessary to provide service to their customers. A competing carrier must obtain access to the same OSS functions in order to be able to sign up customers, place an order for service or facilities with the ILEC, track the progress of that order to completion, receive relevant billing information from the ILEC, and obtain prompt repair and maintenance service for its customers.

This Commission previously has concluded that providing nondiscriminatory access to OSS is a "term and condition" of unbundling network elements under Section 251(c)(3), or resale under Section 251(c)(4). The Commission recently reaffirmed this requirement in the

Ameritech-Michigan Order, and noted that in order for a BOC to demonstrate that is providing the items enumerated in the Competitive Checklist, it must demonstrate, *inter alia*, that it is providing nondiscriminatory access to the systems, information, and personnel that support those elements or services.[17] Because the duty to provide resale services under Section 251(c)(4) and the duty to provide access to network elements under Section 251(c)(3) include the duty to provide nondiscriminatory access to OSS functions, compliance with Sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv) necessarily requires full compliance with the applicable OSS requirements. Similarly, because the Commission previously has found that OSS and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), a deficient OSS necessarily means that a BOC has not fully complied with its unbundling obligations.

As clearly set out in the *Ameritech-Michigan Order* and *the BellSouth-South Carolina Order*,[18] the Commission undertakes a two-part inquiry in evaluating whether a BOC is meeting its statutory obligations to provide CLECs with nondiscriminatory access to OSS functions. First, the BOC must demonstrate that it has deployed the necessary systems and personnel to provide competing carriers with access to each of the necessary OSS functions, and that the BOC has adequately assisted competing carriers in understanding how to implement and use all of the OSS functions available to them. A BOC must demonstrate that it has developed electronic and manual interfaces that allow competing carriers to access preordering, ordering, provisioning,

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17 *Ameritech-Michigan Order*, at ¶ 132

18 *Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, FCC 97-418, Memorandum Opinion and Order (*BellSouth-South Carolina Order*).

billing, and other functions, all of which are identified in the Commission's *Local Competition Order*.[19] In addition, a BOC must demonstrate that the interfaces used to access its OSS functions allow competing carriers to transfer the information received from the BOC to their own back office systems and among the various interfaces provided by the BOC.

Second, the BOC must demonstrate that the OSS functions and interfaces are operationally ready. Moreover, the BOC's deployment of OSS functions to competing carriers must be able to handle current demand as well as reasonably foreseeable demand.

For those OSS functions a BOC provides to a competing carrier that are analogous to OSS functions that the BOC provides to itself, the BOC must provide access to competing carriers that is *equivalent* to the level of access that the BOC provides to itself in terms of quality, accuracy, and timeliness (i.e., it provides OSS functions in *substantially the same time and manner* as it provides to itself). For OSS functions without a retail analog, the BOC must demonstrate that the access it provides competing carriers offers an efficient competitor a *meaningful opportunity to compete*.

The Commission also has concluded that the most probative evidence that the BOC's OSS functions are operationally ready is commercial usage, although the Commission may consider carrier-to-carrier testing, independent third-party testing, and internal testing. Information that compares how the BOC provides access to OSS functions to itself and to competing carriers is critical in assessing whether the BOC is providing nondiscriminatory access to such functions as required by the 1996 Act.

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[19] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, First Report and Order, 11 FCC Rcd. 15499 (*Local Competition Order*).

In this proceeding, BellSouth has not demonstrated that its OSS comply with the requirements of the 1996 Act and the Commission's implementing regulations. Specifically, BellSouth uses an integrated ordering and preordering system when it places its own orders. In contrast, competing carriers are offered separate interfaces for preordering and ordering. For instance, to place an order for a loop, a CLEC would need to validate the customer address through BellSouth's Local Exchange Navigation System ("LENS"). Then, to place the actual order, the CLEC must use the Electronic Data Interchange ("EDI") system. In contrast, BellSouth can obtain preordering information and place an order at the same time using either the Regional Negotiation System ("RNS") or the Service Order Negotiation System ("SONGS"), depending on whether the order is business or residential.

Other OSS deficiencies exist. For instance, for complex resale services and UNEs, LENS does not allow the ability to gather critical information such as data on signaling, circuit design, and necessary equipment. For ordering, LENS and EDI are inadequate for LSRs involving moves, adds, or changes, and are incapable of handling complex resale. In addition, LENS imposes restrictions on Intermedia's ability to obtain CSRs where the account is more than 50 pages in length. In this instance, Intermedia must request the CSR directly from BellSouth's Local Carrier Service Center ("LCSC") and the LCSC then faxes it to Intermedia. This, of course, could take anywhere from three days to three weeks, which severely affects Intermedia's ability to provide timely service to its potential customers. Similarly, once Intermedia has ported a telephone number (i.e., by submitting an order for Remote Call Forwarding), Intermedia can no longer view the CSR for the ported customer through LENS; instead, Intermedia must go to its account representative to obtain a copy of the relevant CSR.

The insertion of the LCSC into the process, as mentioned above, also leads to other concerns. As BellSouth states in its affidavit, BellSouth previously hired an independent consultant to evaluate its LCSC and OSS operations.[20] That consultant found that the LCSC was inefficient and otherwise dysfunctional. Although the consultant ultimately released a rather self-serving report culminating its months-long study, there has been no credible and demonstrable proof that the deficiencies previously identified have been fully rectified.

CLECs continue to experience major problems with BellSouth's order processing. Many LSRs are either delayed or lost. For example, Intermedia's simple LSRs receive either no functional acknowledgment or a false one. In particular, Intermedia continues to experience occurrences of lost orders placed through the EDI system. These problems create significant delays, aggravation, and excessive administrative costs. Because Intermedia has no information on the status of its orders, Intermedia is forced to spend considerable amounts of time tracking its orders, making follow-up calls, and reissuing its orders many times over. Intermedia has repeatedly brought these problems to BellSouth but, at this point, Intermedia's problems persist, albeit not at the level previously experienced by Intermedia. When these problems were initially brought up by Intermedia, BellSouth suggested that Intermedia was to blame. Indeed, BellSouth has a habit of shifting the blame to Intermedia when problems relating to BellSouth's OSS are brought up. For example, in the recently concluded Section 271 proceeding in Tennessee, BellSouth argued that Intermedia's lost orders were somehow attributable to Intermedia's alleged high error rate. This, however, is *non sequitur*. A high error rate—and Intermedia strongly disagrees with BellSouth that its error rate is higher than average—does not translate to

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[20] *See* Affidavit of Jan Funderburg, at 6.

lost orders; rather than losing its orders, Intermedia should have been receiving rejection notices. Equally significant, some of Intermedia's orders for which Firm Order Confirmations ("FOCs") have been received, do not even make it to BellSouth. This can only mean that there is something wrong with EDI-PC.

Finally, BellSouth's performance measures on which CLECs should be able to rely to determine whether CLECs have nondiscriminatory access to BellSouth's OSS, among other things, are sorely inadequate. For example, despite Intermedia's consistent requests for performance measures on data UNEs and services,[21] BellSouth has not incorporated Intermedia's requests into its proposed measurements.

Many of BellSouth's proposed metrics do not allow for reasonable comparisons. For instance, BellSouth has not satisfactorily demonstrated through the performance measures that the amount of time required of CLECs to process an order using LENS or EDI is comparable to the time it takes BellSouth to process a similar order using SONGS or RNS. Similarly, despite clear instructions from the Commission, BellSouth has not provided comparative performance measures for FOCs and reject notices.[22]

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21 Intermedia has made its requirements known to BellSouth in several State Section 271/SGAT proceedings including, most recently, Georgia, Alabama, Tennessee, and Louisiana.

22 The Commission previously concluded that

> because BellSouth has failed to provide data comparing its delivery of FOC notices to competing carriers with how long it takes BellSouth's retail operations to receive the equivalent of a FOC notice for its own orders, BellSouth has not provided any evidence to demonstrate that it is providing nondiscriminatory access.

BellSouth-South Carolina Order, at ¶ 125. With respect to the provision of reject notices, the Commission previously concluded that

> [b]ecause BellSouth has not provided us information on how long it takes its own representative to receive notices of error, we cannot determine from the record

(continued...)

Finally, BellSouth's proposed performance measures do not include performance penalties that are triggered when BellSouth's performance falls below the acceptable standards. Such penalty provisions must be incorporated into BellSouth's performance measurements in order to discourage repeat violations.

It is clear that without a fully functioning and nondiscriminatory access to OSS, BellSouth cannot meaningfully provide UNEs. Since most of these UNEs are critical elements of the Competitive Checklist, it follows that BellSouth cannot satisfy many of the items on the Competitive Checklist. Similarly, the practical availability of resale services is inextricably tied to the CLECs' ability to order—and BellSouth's ability to provide—resale services. Without nondiscriminatory access to OSS, resale is not practically available. Accordingly, BellSouth cannot meet the resale requirement of the Competitive Checklist. In light of these deficiencies, the Commission must find that BellSouth does not fully comply with its statutory obligations and, hence, cannot obtain in-region, interLATA authority in Louisiana at this time.

Finally, in light of BellSouth's demonstrated failure to provide access to and interconnection with BellSouth's data network (including access to data UNEs, such as xDSL, Extended Link, and the like), as discussed at length below, the Commission should clarify that BellSouth must ensure that its OSS are able to handle the preordering, ordering, provisioning, billing, and maintenance and repair of data UNEs and services, including xDSL, ADSL, HDSL,

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(...continued)
what the appropriate time would be for BellSouth's provision of order rejection notices to competing carriers to demonstrate parity.

BellSouth-Louisiana Order, at ¶ 118.

and Extended Link. Similarly, the Commission should insist that BellSouth's performance measures include performance metrics for the above-mentioned services and UNEs.

C. BELLSOUTH DOES NOT PROVIDE ACCESS TO UNBUNDLED NETWORK ELEMENTS.

1. BellSouth's Insistence on Collocation to Combine UNEs is Contrary to Law.

BellSouth is requiring collocation in ways that deny CLECs meaningful access to UNEs. BellSouth has erroneously interpreted the Court of Appeals for the Eighth Circuit's decision[23] to require that CLECs must collocate at every point in the BellSouth network where two or more UNEs must be combined.[24] In the recently concluded Section 271 proceeding in Tennessee, for example, BellSouth unequivocally stated that collocation is the only method BellSouth will make available for CLECs to access UNEs.[25]

This policy thwarts competition and is clearly at odds with the language and spirit of the 1996 Act for several reasons. First, collocation is not the only method for combining UNEs allowed under the 1996 Act. Section 251(c)(3) requires the ILECs to "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . ."[26] Similarly, Section

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23 *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753 (8th Cir. 1997).

24 *See generally Brief*, at 39; Affidavit of W. Keith Milner, at 15.

25 *BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309, Transcript of the Hearing, v. I-A, p. 52 (hereinafter, "Tennessee Transcript"). Copies of the relevant pages of the Tennessee transcript are attached to these comments as Exhibit A.

26 47 U.S.C. § 251(c)(3).

251(c)(3) mandates that the ILECs "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."[27] Nothing in the language of Section 251(c)(3) limits the provision of access to UNEs through collocation. Rather, Section 251(c)(3) requires the provision of access to UNEs "at any technically feasible point."[28]

Indeed, this Commission has made clear that collocation is not the only method of access to UNEs. In Section 51.5 of the Commission's rules, for example, the Commission defined "technically feasible" with reference to collocation "and other methods of achieving interconnection or access to unbundled network elements."[29] Similarly, Section 51.321 of the Commission's rules states that technically feasible methods of access to UNEs "include, but are not limited to," physical and virtual collocation at the ILECs' premises.[30] This suggests that there are other means of access to UNEs outside of physical and virtual collocation. The Eighth Circuit Court's decision did not disturb either Section 51.1 or Section 51.321, thus they remain in full effect.

Second, collocation is inconsistent with the Eighth Circuit Court's holding that a competing provider may provide services entirely through the use of unbundled network elements. As the Eighth Circuit Court has held, under Section 251(c)(3), a CLEC could

> achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network. Nothing in

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27 *Id.*

28 *Id.*

29 47 C.F.R. § 51.5.

30 47 C.F.R. § 51.321.

> this subsection requires a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled elements.[31]

BellSouth's position that the only means to combine UNEs is to collocate facilities, directly contravenes the Eighth Circuit Court's holding because BellSouth would require CLECs to own or control some portion of a telecommunications network. Indeed, the Florida Public Service Commission recently has found that

> BellSouth's requirement that [a CLEC] must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit. As we have already noted, the court stated that a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network and has no obligation to own or control some portion of a telecommunications network before being able to purchase unbundled elements. . . . BellSouth's collocation proposal would impose on [a CLEC] seeking unbundled access the very obligation the court held to be inappropriate under the Act, i.e., to own or control some portion of the network.[32]

Third, BellSouth's insistence on collocation to combine UNEs is also patently anticompetitive. The costs, delay, and restrictions associated with BellSouth's collocation policy are major impediments to the growth of facilities-based competition in the local exchange market in Louisiana. BellSouth's manifestly erroneous interpretation of the Eighth Circuit Court's decision that CLECs must collocate in every end office, tandem, and other location where currently defined UNEs must be connected means that CLECs must incur unreasonably huge costs—often in excess of a quarter to half a million dollars—and lengthy timeframes for implementation. For example, to have access to all of BellSouth's customers in Louisiana, a

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31 *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d at 814.

32 *Motion of AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. to Compel BellSouth Telecommunications, Inc. to Comply with Order No. PSC-96-1579-FOF-TP and to Set Non-Recurring Charges for Combination of Network Elements with BellSouth Telecommunications, Inc. Pursuant to their Agreement*, Docket No. 971140-TP, Order No. PSC-98-0810-FOF-TP (issued June 12, 1998).

CLEC would have to purchase collocation in all of BellSouth's 228 central offices. Currently, the least expensive form of physical collocation available from BellSouth is "unenclosed" or "cageless" collocation. Based on BellSouth's collocation rates, on average, a CLEC would have to pay in excess of $10,000 in *nonrecurring costs* per *unenclosed* collocation, in addition to various other recurring costs. Thus, the nonrecurring costs of *cageless* collocation in BellSouth's territory alone would be in excess of $2 million. Moreover, the nonrecurring and recurring costs significantly multiply with *enclosed* collocation.

BellSouth's general collocation policy is similarly restrictive. Although BellSouth has recently introduced "cageless" collocation,[33] BellSouth insists on onerous restrictions. For example, cageless collocation is simply not an option in some situations. More particularly, CLECs cannot collocate—physically or virtually—any switching equipment in "cageless" collocation facilities.

Aside from the sheer magnitude of the costs associated with collocation, collocation poses other significant problems. For example, collocation creates unnecessary customer outages and delays, as well as introduces multiple points of failure in the network. These problems are compounded by the fact that a CLEC who desires to collocate is faced with many "unknowns." For instance, BellSouth's SGAT does not include installation intervals for collocation. Rather, BellSouth promises to provide collocation "as soon as we reasonably can."[34]

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33 Intermedia has been asking for cageless collocation for the last two years, but it was only during the hearing in the Tennessee Section 271 proceeding that Intermedia has been made aware by BellSouth that cageless collocation is now being offered. Indeed, Intermedia had a meeting on this issue just prior to the Tennessee hearing, but BellSouth did not, at that time, commit to providing cageless collocation to Intermedia.

34 Tennessee Transcript, v. I-A, p. 52.

Because BellSouth does not provide specific and ascertainable intervals for collocation, CLECs who desire to collocate have no guaranty that BellSouth can provide collocation in a timely manner. That BellSouth promises to provide collocation "as soon as we reasonably can," does not alleviate the business concerns of CLECs who must carefully plan their operations and deployment.

Wholly apart from the absence of installation intervals, which makes CLECs susceptible to deployment delays (at BellSouth's whim), CLECs generally are faced with indeterminable costs. In several State Section 271 proceedings, for instance, BellSouth has acknowledged that there is no predefined formula for calculating space preparation costs.[35] Thus, CLECs not only have to contend with timeliness issues, but they also must worry about unknown costs.

BellSouth recently has stated that it will make a form of virtual collocation available to CLECs to combine UNEs. In order to use this virtual collocation alternative, however, CLECs must collocate a "prewired" equipment frame that establishes connections between line side and trunk side circuits. BellSouth then plugs unbundled local loops and interoffice trunks into ports preselected by the CLEC. This arrangement, however, is unacceptable for a variety of reasons, not the least of which is the fact that it is extremely cumbersome, and requires a CLEC to plan well in advance to prewire the frame. Thus, the virtual collocation "alternative" offered by BellSouth is not a viable alternative at all for many CLECs.[36]

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35 *See, e.g.,* Tennessee Transcript, v. II-E, p. 254.

36 There appears to be a practical solution to BellSouth's concern that, by combining the UNEs in a virtual collocation environment, it would be violating the Eighth Circuit Court's proscription against UNE combinations. BellSouth could permit a third-party vendor to perform the UNE combinations, thus obviating the need for BellSouth to perform the combination itself.

Finally, even in instances where a CLEC may wish to physically collocate its facilities, physical collocation may not be available because of space limitation. Just this year, and in Florida alone, BellSouth has filed with the Florida Public Service Commission at least three petitions for waiver of the 1996 Act's physical collocation requirements. BellSouth has sought exemptions from the physical collocation requirements on the grounds that it is "unable to meet physical collocation requests due to space limitations in the [central office]."[37] In two of these petitions, BellSouth states that it does not expect to construct an addition to the central office in the foreseeable future.[38] Copies of these petitions are attached to these comments collectively as Exhibit B.

2. BellSouth Must Provide an "Extended Link" Alternative to Collocation.

To alleviate some of the problems associated with collocation, Intermedia submits that the Commission should, as a condition of in-region, interLATA grant, require BellSouth to provide an "Extended Link" alternative to CLECs. The term "Extended Link" refers to a combination of a local loop, multiplexing in an ILEC end office, and interoffice transport that ultimately delivers traffic to a CLEC's collocated cage in another end office, or to a CLEC's point-of-presence outside of an end office. Extended Link is an important alternative to traditional collocation offered by BellSouth because it eliminates the need for a CLEC to

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37 *BellSouth Telecommunications, Inc.'s Petition for Temporary Waiver for Daytona Beach Port Orange Central Office* (filed July 27, 1998).

38 *See BellSouth Telecommunications, Inc.'s Petition for Waiver for the Boca Raton Teeca Central* Office (filed July 27, 1998); *BellSouth Telecommunications, Inc.'s Petition for Waiver for the Miami Palmetto Central Office* (filed July 27, 1998).

collocate in every BellSouth end office within its service area. As a result, Extended Link greatly expands the CLEC's addressable customer base. This is particularly useful in Louisiana in light of the significant costs required of CLECs to collocate in BellSouth's several central offices. At the same time, this alternative addresses the problems associated with potential exhaust of available collocation space in BellSouth's central offices.[39] Intermedia has, from the start, sought this type of arrangement from BellSouth but, so far, BellSouth has yet to provide it—and likely will not provide it without this Commission's *imprimatur*.

Intermedia believes that the 1996 Act's Sections 251, 252, and 271 obligations apply equally to Extended Link. Nevertheless, to ensure that BellSouth's obligations are clear, the Commission must define Extended Link as a discrete UNE. The Commission clearly has the power to define additional network elements under the provisions of the 1996 Act. Moreover, there is ample precedent to support defining a single UNE to include a series of discrete network functions. For example, loops as currently defined include the functionality of the loop cable and Network Interface Device ("NID"), even though the NID is also defined as a discrete UNE.

Defining the Extended Link as a single UNE would ensure that CLECs may purchase Extended Links at cost-based rates as required by Section 252(d) of the 1996 Act. Without a requirement that BellSouth provide Extended Links at cost-based rates, BellSouth could price Extended Links at premium rates and, thus, severely restrict their practical utility. Moreover, the Commission should make clear that Extended Links must be available to CLECs at all levels of service. For Extended Link to be truly useful, CLECs must have the ability to purchase

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[39] As discussed above, BellSouth is already running out of space in several of its central offices. As a result, BellSouth has filed several requests for exemption from the 1996 Act's physical collocation requirements.